

**IN THE DISTRICT COURT
FOR THE UNITED STATES OF AMERICA
WESTERN DISTRICT OF TENNESSEE**

EDWARD ALAN YEARTA,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No.: 2:17-cv-2117 SHM-egb
)	JURY DEMAND
AMUSEMENTS OF AMERICA, INC.;)	
DELTA FAIR, INC.; UNIVERSAL FAIRS,)	
LLC; and BELLE CITY AMUSEMENTS,)	
INC.)	
)	
Defendants.)	
)	
AMUSEMENTS OF AMERICA, INC.,)	
)	
Crossclaim Plaintiff)	
v.)	
)	
BELLE CITY AMUSEMENTS, INC.,)	
)	
Crossclaim Defendant.)	

**FIRST AMENDED CROSSCLAIM OF AMUSEMENTS OF AMERICA, INC.
AGAINST DEFENDANT BELLE CITY AMUSEMENTS, INC.**

Crossclaim Plaintiff Amusements of America, Inc. (“AoA”), by its undersigned attorney, for its crossclaim against Crossclaim Defendant Belle City Amusements, Inc. (“BCA”), hereby alleges as follows:

Nature of the Proceedings

1. In this action, Plaintiff Edward Alan Yearta (“Plaintiff”) seeks to recover for alleged injuries arising out of the alleged negligence of the defendants during the setup of the 2016 Delta Fair & Music Festival which he claims “was a direct, legal, and proximate cause of [his]

injuries and damages” A copy of Plaintiff’s First Amended Complaint is attached hereto as **Exhibit A.**

2. Plaintiff alleges that on approximately August 30, 2016, Plaintiff, an employee of Prime Time Amusements, LLC, was setting up a ride called the Alpine Bob at the Delta Fair, and was electrocuted and suffered physical injuries after the Ring of Fire, a ride being erected by AoA employees/agents, allegedly came into contact with a high-voltage powerline 35 feet overhead. Plaintiff alleges that after this alleged contact, the current from the high-voltage power line flowed into a generator supplied by BCA, which at the time was supplying power to the Alpine Bob and the Ring of Fire, allegedly electrocuting and injuring Plaintiff while he stood at the controls of the Alpine Bob. Plaintiff alleges that BCA “negligently supplied, maintained, and/or installed its generator such that it lacked sufficient ‘grounding.’”

3. By this crossclaim, AoA seeks indemnification and defense from BCA as the supplier of the generator used to power the Alpine Bob and the Ring of Fire. AoA’s claim for indemnification and defense arises out of contract.

Parties

4. AoA is a New Jersey corporation with its principal place of business located at 225 Route 522, Bldg. B, Suite 202, Manalapan, New Jersey 07006.

5. BCA is a Florida corporation with its principal place of business located at 1901 State Road 419, Longwood, FL 32750.

Factual Background

6. AoA and BCA have a longstanding business relationship that has spanned several years with both entities working together on various fairs, carnivals and festivals east of the Mississippi River, including the Delta Fair & Music Festival.

7. Defendant Delta Fair, Inc. holds the Delta Fair & Music Festival annually in Shelby County, Tennessee.

8. Defendant Delta Fair, Inc. contracted with AoA to procure amusements, rides, and concessions for the carnival midway at the 2016 Delta Fair & Music Festival (“2016 Delta Fair”).

9. AoA owns and operates many amusement rides, and planned to make a number of those amusement rides available in the carnival midway at the 2016 Delta Fair. Additionally, however, AoA made arrangements for other companies to also provide amusement rides in the carnival midway. One of these companies was Prime Time Amusements, LLC (“Prime Time”) and another was BCA.

10. Prior to July 24, 2016, representatives of AoA and BCA had oral discussions regarding the amusement rides and necessary equipment that BCA would provide and set up at the 2016 Delta Fair. These discussions included BCA’s commitment to bring certain amusement rides as well as a generator.

11. On July 24, 2016, AoA and BCA entered into an Independent Attraction Contract (“IAC”) in connection with the 2016 Delta Fair. A copy of the IAC is attached hereto as **Exhibit B** and is incorporated herein by reference.

12. Pursuant to the IAC, BCA agreed to provide certain amusement rides at the 2016 Delta Fair. *See* IAC at ¶3.

13. BCA also agreed to “keep and operate all Rides and Attractions in good and safe condition and to comply with requirements established by [AoA] to promote safety. . . .” *See* IAC at ¶14. The full provision reads as follows:

SUBCONTRACTOR agrees to keep and operate all Rides and Attractions in good and safe condition and to comply with requirements established by AMUSEMENTS OF AMERICA to promote safety and to permit AMUSEMENTS OF AMERICA to

have free access to said Rides and Attractions at all times for the purpose of ascertaining compliance with the provisions of this Contract. SUBCONTRACTOR'S equipment must meet the standards set by AMUSEMENTS OF AMERICA for a clean and presentable appearance and should present photographs to attest to same.

See IAC at ¶14.

14. Pursuant to the IAC, BCA agreed to indemnify, defend, and hold harmless AoA, among others, against “any and all injuries, claims, losses or liabilities which result from any acts or omissions of [BCA] or of any [of its] employees, agents or subcontractors in connection with [BCA's] engagements hereunder or which may otherwise arise in connection with [BCA's] engagement hereunder.” *See* IAC at ¶17. The full provision reads as follows:

SUBCONTRACTOR further agrees to indemnify and defend AMUSEMENTS OF AMERICA, VIVONA FAMILY ENTERTAINMENT, DELTA FAIR INC., AGRICENTER INTERNATIONAL, SHELBY COUNTY GOVERNMENT and its officers, employees, agents and other subcontractors for, and to hold AMUSEMENTS OF AMERICA, VIVONA FAMILY ENTERTAINMENT, DELTA FAIR INC., AGRICENTER INTERNATIONAL, SHELBY COUNTY GOVERNMENT and its officers, employees, agents and other subcontractors harmless against, any and all injuries, claims, losses or liabilities which result from any acts or omissions of SUBCONTRACTOR or of any SUBCONTRACTOR'S employees, agents or subcontractors in connection with the engagements hereunder or which may otherwise arise in connection with the SUBCONTRACTOR'S engagement hereunder.

See IAC at ¶17.

15. Prior to the opening of the 2016 Delta Fair, AoA and the companies with which it subcontracted to provide amusement rides, including Prime Time and BCA, began setting up amusement rides and equipment in the carnival midway in the spaces assigned to them.

16. On August 30, 2016, BCA's employees/agents set up the amusement rides and the generator that it agreed to supply for the 2016 Delta Fair pursuant to the IAC.

17. On the same date, Prime Time's employees/agents, including Plaintiff, were setting up an amusement ride known as the Alpine Bob in a space designated for Prime Time in the lower midway.

18. On the same date, AoA's employees/agents were setting up an amusement ride known as the Ring of Fire in an adjacent space designated for AoA in the lower midway.

19. The Alpine Bob and the Ring of Fire were both powered by a nearby generator supplied by BCA and set up by BCA in the lower midway.

20. Upon information and belief, when BCA's employees/agents set up the generator in the lower midway, they did not take the appropriate and necessary steps to ensure that the generator was properly grounded to prevent injury to its own employees and to others.

21. Plaintiff's First Amended Complaint alleges that during the 2016 Delta Fair setup on August 30, 2016, current of 13,200 volts "flow[ed] into the generator owned by [BCA] and "[t]he high-voltage current travelled from the BCA Generator and into the Alpine Bob as [Plaintiff] stood at its controls." *See* Plaintiff's First Amended Complaint, at ¶¶38-39.

22. Plaintiff's First Amended Complaint further alleges that, as a result of the alleged voltage flowing into the controls of the Alpine Bob where Plaintiff stood, Plaintiff "was electrocuted, immobilized, and in excruciating pain" and "suffered enormous physical injuries as a direct result." *See* Plaintiff's First Amended Complaint, at ¶40.

23. Upon information and belief, Plaintiff's alleged injuries would not have arisen but for BCA's failure to properly ground its generator while setting up its rides for the 2016 Delta Fair.

24. Plaintiff's First Amended Complaint therefore asserts injuries, claims, losses or liabilities which result from any acts or omissions of BCA or of any of its employees, agents or

subcontractors in connection with BCA's engagements under the IAC or which may otherwise arise in connection with BCA's engagement under the IAC.

COUNT 1—INDEMNITY AND DEFENSE (CONTRACT)

25. AoA realleges and incorporates by reference the allegations contained in paragraphs 1 through 24 as if fully set forth herein.

26. AoA and BCA entered into the Independent Attraction Contract (previously defined as "IAC") in connection with the 2016 Delta Fair.

27. Pursuant to the IAC, BCA agreed to indemnify, defend, and hold harmless AoA, among others, against any and all injuries, claims, losses or liabilities which result from any acts or omissions of BCA or of any of its employees, agents or subcontractors in connection with BCA's engagements under the IAC or which may otherwise arise in connection with BCA's engagement under the IAC.

28. BCA must defend AoA under the IAC in connection with Plaintiff's claims in this action.

29. To the extent AoA is found liable for any injuries, claims, losses or liabilities in this lawsuit, which AoA denies, or AoA enters into a settlement in connection with this action, BCA must indemnify AoA under the IAC in connection with Plaintiff's claims in this action.

30. To the extent AoA is found liable for any injuries, claims, losses or liabilities in this lawsuit, which AoA denies, or AoA enters into a settlement in connection with this action, BCA must hold AoA harmless under the IAC in connection with Plaintiff's claims in this action.

31. In the event that Plaintiff is able to recover any portion of his alleged damages, in settlement or otherwise, from AoA—which damages AoA denies—then BCA should be held responsible for such loss.

32. BCA is responsible for all costs and fees, including attorney's fees, incurred by AoA in the defense of this action.

WHEREFORE, AoA is entitled to a judgment holding BCA responsible for (i) any loss incurred by AoA in the event Plaintiff is able to recover any part of his alleged damages from AoA—which damages AoA denies; (ii) any amount paid by AoA in partial or complete settlement of this action; (iii) all costs and fees, including attorney's fees, incurred by AoA in the defense of this action; and (iv) interest and any other relief the Court deems just and proper.

Respectfully submitted,

/s/ **Kristine E. Nelson**

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2017, the foregoing was served on all counsel of record in accordance with the Federal Rules of Civil Procedure via the Court's ECF system.

/s/ *Kristine E. Nelson*